

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patentee: Binh T. Nguyen, et al.
Patent No.: 8,002,630
Issued: August 23, 2011
Appl. No.: 10/642,937
Conf. No.: 4289
Filed: August 18, 2003
Title: TOURNAMENT GAME SYSTEM AND METHOD USING A
TOURNAMENT GAME CARD
Art Unit: 3718
Examiner: Jasson H. Yoo
Docket No.: 3718611-06135

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. § 1.705(d)**

Sir:

Patentee hereby petitions for reconsideration of the Patent Term Adjustment accorded the above-referenced application at the time of issuance. The Issue Notification and Determination of Patent Term Adjustment under 35 U.S.C. §154(b), mailed on August 3, 2011, states that the Total Patent Term Adjustment (PTA) is 675 days. That is, USPTO "A" Delay days of 1260, USPTO "B" Delay days of 496, Overlap days of 496 (resulting in Non-Overlapping USPTO Delay days of 1260), APPL Delay days of 144, and USPTO manual adjustments of -441 days. The Overlap days of 496 appear to be overstated (and, consequently, the Non-Overlapping USPTO Delay days of 1260 appear to be understated) and the APPL Delay days of 144 appear to be understated, resulting in the Total PTA being shorter than appropriate on the issue date of August 23, 2011.

Patentee respectfully requests a review of the prosecution file history, with attention to the following entries: (1) the January 9, 2007 entry of "Mail Restriction Requirement;" (2) the December 28, 2007 entry of "Request for Continued Examination

(RCE);” and (3) the January 2, 2008 entry of “Information Disclosure Statement (IDS) Filed.”

STATEMENT OF FACTS

Regarding the Overlap days calculation, Patentee filed the underlying application on August 18, 2003. The PTA History reflects that the USPTO mailed a Restriction Requirement on January 9, 2007. This resulted in an “A” Delay for the 813 days between the date 14 months from filing (October 18, 2004) and the mailing date of the restriction requirement (January 9, 2007). This “A” Delay was properly accounted for via an original “A” Delay calculation of 1260 days calculated by the USPTO at allowance and a PTO Manual Adjustment of -441 days included in response to a Request for Reconsideration filed by Patentee after allowance.

While the above-described “A” Delay was accruing (October 18, 2004 to January 9, 2007), the date three years from filing (August 18, 2006) passed, and “B” Delay began to accrue. “B” Delay continued to accrue until an RCE was filed by Patentee on December 28, 2007. The USPTO properly calculated the 496 days of “B” Delay running from the three-year date (August 18, 2006) until the RCE date (December 28, 2007).

Accordingly, under 35 U.S.C. § 154(b)(2)(A) and 37 C.F.R. § 1.703(f), the Overlap period between the “A” Delay described above and the “B” Delay described above runs from the three year date of August 18, 2006 until the mailing of the Restriction Requirement on January 9, 2007. In other words, during the period from August 18, 2006 to January 9, 2007, both “A” Delay and “B” Delay were accruing. There are 144 days between August 18, 2006 and January 9, 2007. This differs from the USPTO calculated Overlap of 496 days by 352 days. Thus, Overlap days are overstated by 352 days. Consequently, Non-Overlapping USPTO Delays at issuance are understated by 352 days.

Regarding the APPL Delay days calculation, the PTA History reflects that the USPTO mailed a Final Rejection on August 10, 2007. Patentee responded to this Final Rejection on December 28, 2007 (incurring an APPL Delay of 29 days, which was properly calculated by the USPTO). Patentee then filed an IDS on January 2, 2008. Pursuant to 37 C.F.R. § 1.704(c)(8), Patentee should be assessed 5 APPL Delay days

associated with this IDS filing because the IDS constituted a submission of a supplemental reply or other paper (other than a supplemental reply or other paper expressly requested by the examiner) after a reply had been filed. The USPTO did not include this 5 day APPL delay in its PTA Determination at Issuance. Therefore, APPL Delay is understated by 5 days.

Combined, the understatement of Non-Overlapping USPTO Delays by 352 days and the understatement of APPL Delay at issuance of 5 days yields a net understatement of Total PTA at issuance of 347 days. In other words, Total PTA at issuance should be 1022 days, in contrast to the presently calculated 675 days.

This patent is subject to two Terminal Disclaimers (filed April 23, 2004) to U.S. Appl. No. 10/642,934 and to U.S. Patent No. 7,798,901. U.S. Appl. No. 10/642,934 is not yet patented and, therefore, has no calculated PTA days. U.S. Patent No. 7,798,901 was filed August 18, 2003 and has 1618 PTA days. This means that, when corrected, the present patent will be able to use 1022 of its (corrected) 1022 Total PTA days.

Patentee respectfully submits that there do not appear to be any additional circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of this application other than the one discussed above and the others calculated by the USPTO.

REMARKS

In consideration of the events described above, Patentee believes the Total PTA calculation of 675 days is understated as of the issuance date. Patentee respectfully requests reconsideration of the Patent Term Adjustment in the following manner.

- 1) Non-Overlapping USPTO Delay days should be corrected to reflect a decrease in Overlap days of 352 days, thereby increasing the Non-Overlapping USPTO Delay days from 1260 days to 1612 days;
- 2) APPL Delay days should be corrected to reflect an increase of 5 APPL Delay days associated with Patentee's January 2, 2008 IDS filing, supplementing Patentee's earlier filed reply on December 28, 2007, thereby increasing the APPL Delay days from 144 to 149 days; and

- 3) Total PTA days should be increased from 675 days to 1022 days (1612 Non-Overlapping USPTO Delay days–149 APPL Delay days–441 USPTO Maunal Adjustment days).

Pursuant to 37 CFR § 1.18(e), the fee of \$200 is submitted herewith. To the extent that any additional fees are due for this Petition, the Commissioner is hereby authorized to charge them to Patentee's undersigned attorney's Deposit Account No. 02-1818.

Thank you for your consideration.

Respectfully submitted,

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